

Coast Guard, DHS

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§ 138.130 Fees.

(a) The Director, NPFC, will not issue or renew a Certificate until the fees set forth in paragraphs (c) and (d) of this section have been paid.

(b) For those using E-COFR, credit card payment is required. Otherwise, fees must be paid in United States currency by check, draft, or postal money order made payable to the "U.S. Coast Guard".

(c) An applicant who submits an Application under this subpart must pay a non-refundable Application fee of \$200 for each Application (*i.e.*, individual Certificate, Fleet Certificate, or Master Certificate), except as follows:

(1) An Application for an additional (*i.e.*, supplemental) individual Certificate,

(2) A request to amend or renew an existing Certificate, or

(3) An Application submitted within 90 days following a revocation or other invalidation of a Certificate.

(d) In addition to the Application fee of \$200, an applicant must pay a certification fee of \$100 for each vessel for which a Certificate is requested. An applicant must pay the \$100 certification fee for each vessel listed in, or later added to, an Application for an individual Certificate(s). An applicant must pay the \$100 certification fee to renew or to reissue a Certificate for any reason, including, but not limited to, a vessel or operator name change.

(e) A certification fee is refunded, upon receipt of a written request, if the Application is denied or withdrawn before issuance of the Certificate. Overpayments of Application and certification fees are refunded, on request, only if the refund is for \$100 or more. However, any overpayments not refunded will be credited, for a period of 3 years from the date of receipt of the monies by the Coast Guard, for the applicant's possible future use or transfer to another applicant under this subpart.

§ 138.140 Enforcement.

(a) Any person who fails to comply with this subpart with respect to evidence of financial responsibility under Section 1016 of OPA 90 (33 U.S.C. 2716) is subject to a civil penalty under Section 4303(a) of OPA 90 (33 U.S.C.

2716a(a)). In addition, under Section 4303(b) of OPA 90 (33 U.S.C. 2716a(b)), the Attorney General may secure such relief as may be necessary to compel compliance with the OPA 90 requirements of this subpart, including termination of operations. Further, any person who fails to comply with this subpart with respect to evidence of financial responsibility under Section 108(a) of CERCLA (42 U.S.C. 9608(a)), is subject to a Class I administrative civil penalty, a Class II administrative civil penalty or a judicial penalty under Section 109 of CERCLA (42 U.S.C. 9609).

(b) The Secretary of the Department in which the U.S. Coast Guard is operating will withhold or revoke the clearance required by 46 U.S.C. 60105 to any vessel subject to this subpart that has not provided the evidence of financial responsibility required by this subpart.

(c) The Coast Guard may deny entry to any port or place in the United States or the navigable waters of the United States, and may detain at a port or place in the United States in which it is located, any vessel subject to this subpart, which has not provided the evidence of financial responsibility required by this subpart.

(d) Any vessel subject to this subpart which is found operating in the navigable waters without having been issued a Certificate or maintained the necessary evidence of financial responsibility as required by this subpart is subject to seizure by, and forfeiture to, the United States.

(e) Knowingly and willfully using an altered copy of a Certificate, or using a copy of a revoked, expired or voided Certificate for anything other than recordkeeping purposes, is prohibited. If a Certificate is revoked, has expired or is rendered void for any reason, the certificant must cease using all copies of the Certificate for anything other than the operator's own historical recordkeeping purposes.

§ 138.150 Service of process.

(a) When executing the forms required by this subpart, each applicant, certificant and guarantor must designate thereon a person located in the United States as its agent for service of process for purposes of this subpart and for receipt of notices of responsible

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party designations and presentations of claims under the Acts (collectively referred to herein as “service of process”). Each designated agent must acknowledge the agency designation in writing unless the agent has already furnished the Director, NPFCC, with a master (*i.e.*, blanket) agency acknowledgment showing that the agent has agreed in advance to act as the United States agent for service of process for the applicant, certificant, or guarantor in question.

(b) If any applicant, certificant, or guarantor desires, for any reason, to change any designated agent, the applicant, certificant, or guarantor must notify the Director, NPFCC, of the change. If a master agency acknowledgment for the new agent is not on file with NPFCC, the applicant, certificant, or guarantor must furnish to the Director, NPFCC, all the relevant information, including the new agent’s acknowledgment, required in accordance with paragraph (a) of this section. In the event of death, disability, unavailability, or similar event of a designated agent, the applicant, certificant, or guarantor must designate another agent in accordance with paragraph (a) of this section within 10 days of knowledge of any such event. The applicant, certificant, or guarantor must submit the new designation to the Director, NPFCC. The Director, NPFCC, may deny or revoke a Certificate if an applicant, certificant, or guarantor fails to designate and maintain an agent for service of process.

(c) If a designated agent cannot be served because of death, disability, unavailability, or similar event, and another agent has not been designated under this section, then service of process on the Director, NPFCC, will constitute valid service of process. Service of process on the Director, NPFCC, will not be effective unless the server—

(1) Sends the applicant, certificant, or guarantor, as applicable (by registered mail, at the last known address on file with the Director, NPFCC), a copy of each document served on the Director, NPFCC; and

(2) Attests to this registered mailing, at the time process is served upon the Director, NPFCC, indicating that the in-

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tent of the mailing is to effect service of process on the applicant, certificant, or guarantor and that service on the designated agent is not possible, stating the reason why.

Subpart B—OPA 90 Limits of Liability (Vessels and Deepwater Ports)

SOURCE: USCG–2008–0007, 74 FR 31368, July 1, 2009, unless otherwise noted.

§ 138.200 Scope.

This subpart sets forth the limits of liability for vessels and deepwater ports under Title I of the Oil Pollution Act of 1990, as amended (33 U.S.C. 2701, *et seq.*) (OPA 90), as adjusted under Section 1004(d) of OPA 90 (33 U.S.C. 2704(d)). This subpart also sets forth the method for adjusting the limits of liability by regulation for inflation under Section 1004(d) of OPA 90 (33 U.S.C. 2704(d)).

§ 138.210 Applicability.

This subpart applies to you if you are a responsible party for a vessel as defined under Section 1001(37) of OPA 90 (33 U.S.C. 2701(37)) or a deepwater port as defined under Section 1001(6) of OPA 90 (33 U.S.C. 2701(6)), unless your OPA 90 liability is unlimited under Section 1004(c) of OPA 90 (33 U.S.C. 2704(c)).

§ 138.220 Definitions.

(a) As used in this subpart, the following terms have the meaning as set forth in Section 1001 of OPA 90 (33 U.S.C. 2701): *deepwater port*, *gross ton*, *liability*, *oil*, *responsible party*, *tank vessel*, and *vessel*.

(b) As used in this subpart—

Annual CPI-U means the annual “Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All items, 1982–84=100”, published by the U.S. Department of Labor, Bureau of Labor Statistics.

Director, NPFCC means the head of the U.S. Coast Guard, National Pollution Funds Center (NPFCC).

Single-hull means the hull of a tank vessel that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, that is not a